

Service Date: October 6, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Montana Public)	UTILITY DIVISION
Service Commission's Investigation)	DOCKET NO. 94.2.5
into Extended Area Service.)	ORDER NO. 5779a

PROCEDURAL ORDER

Under the authority of ARM 38.2.2702, the Montana Public Service Commission (Commission) enters this order setting forth the procedure to be followed in Docket No. 94.2.5.

On February 11, 1994 the Commission issued a Notice which initiated Docket No. 94.2.5 to consider expanded local calling areas (extended area service, EAS) and all related issues, to re-examine the criteria for EAS in the existing administrative rules (ARM 38-5.1301-1303), and to consider ordering and implementing EAS in particular service areas. Attachment "A" of said Notice listed the potential EAS routes which the Commission is aware meets an 8-call-per-line-per month threshold. Other routes and exchanges, however, may also be considered for extended area service.

Intervention

i. The deadline for filing Petitions to Intervene (set in the "EAS Notice" served February 11, 1994) was March 4, 1994. Petitions to Intervene filed after that date must comply with ARM 38.2.2401 - 38.2.2406.

Protective Order

ii. The provision of information allegedly of a confidential or trade secret nature will be governed by the provisions of a Protective Order to be issued herein.

Service and Filing

iii. Parties shall file copies of all pleadings, motions, discovery requests and responses, pre-filed testimony, briefs and all other documents, with the PSC, and serve all parties and other entities and individuals on the attached Service List. An original and seven (7) copies of all discovery must be filed with the PSC, and an original and eleven (11) copies of all other documents. (Only one copy of proprietary documents shall be filed -- on yellow paper.) The PSC or its staff may designate different forms of service for some parties on the service list as appropriate, at a later date (e.g. overnight mail, cover letter only, etc.).

Schedule

iv. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment "A" which is attached hereto and incorporated herein by this reference.

Discovery

v. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as "data requests" (informal interrogatories).

vi. The PSC directs all parties to prepare data requests according to the following guidelines:

(a) All data requests must be numbered consecutively, regardless of the party to whom the request(s) are directed, and include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number and page number may be included in addition to, but not in lieu of, the subject of the request. Each party should attempt to keep descriptions consistent from one request to another.

(b) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e), without any sub-parts. If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(c) Examples of acceptable data requests follow:

PSC-500 RE: Purchased Gas Contracts
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

vii. The party receiving written discovery or data requests has five calendar days from receipt to file objections to the request(s). Notice of the objection shall be served upon the PSC and on all parties (as provided in the paragraph above). The PSC may dispose of objections by prompt ruling or may schedule argument. Failure to timely object will be deemed a waiver of objections.

viii. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must serve its written objection(s) and requested relief simultaneously upon the PSC and parties within five calendar days after receipt of such response (as provided in the paragraph above). The PSC may dispose of such objection(s) by prompt ruling or may schedule argument. The PSC will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

ix. Parties are encouraged to attempt to resolve all discovery disputes between themselves, before filing objections.

All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of the requests and responses.

x. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause as to why the request was not submitted within the time period allowed.

xi. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in:

(a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of

related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

xii. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. See ARM 38.2.3301 through 38.2.3305.

Testimony and Evidence

xiii. The PSC contemplates a complete identification of issues before the hearing. The PSC will closely scrutinize new issues or data in new areas introduced at the time of hearing, and may disallow the issues or information unless reasonably related to issues earlier identified in the application, prefiled testimony or proceedings.

xiv. At hearing, the PSC will admit into the record all prefiled direct, answer, and rebuttal testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. The testimony will be an exhibit and not otherwise entered into the transcript.

xv. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

xvi. When cross-examination is based on a document not previously filed with the PSC, copies of the document must be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the PSC staff, and all parties. The last requirement may be waived if the documents to be introduced are bulky, or for other good cause, upon making previous arrangements with the PSC and all parties.

xvii. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or in the testimony of a public witness. Such testimony will be allowed only by leave of the PSC or presiding officer.

xviii. The PSC may allow citizens and citizen groups to make statements without submitting prepared written testimony.

In addition, if they have prepared written testimony they may read it or have it adopted directly into the record.

xix. The Montana Rules of Evidence in effect at the time of the hearing will apply.

xx. Any party to this proceeding responding to written discovery from any other party or the PSC shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, see Rule 32, M.R.Civ.P. regarding admission of depositions).

Prehearing Motions and Conferences

xxi. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter

connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

xxii. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding; simplification of issues; possibility of obtaining admissions of fact and documents; distribution and marking of written testimony and exhibits prior to the hearing; and other procedural matters as may aid in the disposition of the proceeding.

xxiii. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of EAS members and other regulated utilities at any time.

Prehearing Memorandum

25. Each party and the Commission staff will serve a prehearing memorandum on the Commission and all formal parties in this Docket on or before May 9, 1995 containing the following information:

- a) Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;
- b) The name of the witness responsible for the Data Response or through which the exhibit will be offered; and
- c) The issue to which the Data Response or document is relevant.

In addition, all parties (but not the Commission staff) are required to include the following in their prehearing memorandum:

- d) A list of all issues, contested and uncontested;
- e) Witnesses the party will call to testify;
- f) A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);
- g) A proposed order of cross-examination;
- h) Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.

Satellite Hearings

xxiv. The Commission will schedule satellite hearings to receive public testimony (pursuant to Paragraph 18). Notice of said satellite hearings will be served at a later date.

Amendment

xxv. The provisions of this Order may only be amended by PSC action, or PSC staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.

Done and Dated this 3rd day of October, 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

Service Date:

ATTACHMENT "A"

Procedural Schedule
Extended Area Service, Docket No. 94.2.5, Order No. 5779a

<u>Deadline</u>	<u>Action</u>
October 31, 1994	Data Requests Due.
November 21, 1994	Answers to Data Requests Due.
December 12, 1994	Prefiled Testimony due from all parties.
January 3, 1995	Data Requests on Prefiled Testimony due.
January 10, 1995	Additional Issues Order (Optional).
January 24, 1995	Answers to January 3, Data Requests due.
February 21, 1995	Additional Issues Testimony due.
March 7, 1995	Prefiled Rebuttal/Cross-Answer Testimony due.
March 14, 1995	Additional Issues Data Requests due.
March 27, 1995	Data Requests on March 7 Rebuttal/ Cross-Answer Testimony due.
April 3, 1995	Answers to March 14 Additional Issues Data Requests due.
April 18, 1995	Answers to March 27 Data Requests due.
April 25, 1995	Additional Issues Rebuttal Testimony due.
May 9, 1995	Prehearing Memorandum.
May 23, 1995	Prehearing Conference (tentative).
May 30 or 31, 1995	First day of Technical Hearing.